

1820 Central Park Avenue Restaurant Corp. d/b/a  
Charlie Brown's and Hotel, Restaurant and  
Club Employees and Bartenders Union, Local 6,  
AFL-CIO, Petitioner. Case 2-RC-19439

25 July 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 21 December 1981 and the Regional Director's report recommending disposition of them. The tally of ballots shows 25 for and 9 against the Petitioner, with no challenged ballots. The Board has reviewed the record in light of the Employer's exceptions and its brief and has adopted the Regional Director's findings and recommendations only to the extent consistent with this Decision and Order.

The Petitioner, Local 6, received a majority of the valid ballots cast in the election. The Regional Director found that on 1 January 1983 the Hotel Employees and Restaurant Employees International Union<sup>1</sup> imposed a trusteeship on part of the Petitioner and that the trusteeship was to operate under the name "Hotel and Restaurant Employees Union Local 100." This trusteeship was to last for at least 18 months.

It severed from the Petitioner about 40 percent of its former membership in a number of discrete bargaining units that were at one time represented by several separate locals. The Employer contends that Local 100 will represent employees in the restaurant industry, such as the employees in this bargaining unit, while Local 6 will represent only employees in the hotel industry.

The Employer's objections to the election are based on this change in the structure of the Petitioner; one objection alleges that the organization now seeking certification as "Local 6" is not the same organization which filed the petition and won the election.<sup>2</sup> The Regional Director recommended that the objections be overruled, finding that the Petitioner continued to operate as it did before the trusteeship was imposed, and concluding that it would be premature to find that a new local would be formed after the trusteeship had been in place for 18 months. He further found it unnecessary to address the question of whether Local 100 was a successor to the Petitioner. We cannot agree.

<sup>1</sup> The Regional Director found that the Petitioner is an affiliate of this International organization.

<sup>2</sup> In view of our decision herein we find it unnecessary to discuss the Employer's other objections.

Where a certified or recognized representative changes its organizational structure, the Board must determine—to issue either an amendment of certification or a bargaining order—whether the altered organization is still the employees' representative. Our primary concern in such cases is whether the change in structure reflected the employees' desires. *Newspapers, Inc.*, 210 NLRB 8 (1974). We believe the same question must be resolved in this case before we can certify, on the basis of an election, an organization whose structure has changed since the election was held.

The division of a local union into two or more locals is a structural change that raises a question as to continuity of representation, requiring a showing that it reflects the employees' desires. *Climax Molybdenum Co.*, 146 NLRB 508 (1964).<sup>3</sup> In this case, no employee had an opportunity to participate in the decision to divide the Petitioner into the present Local 6 and the trusted Local 100.<sup>4</sup> It would therefore be inappropriate for the Board to certify the Petitioner in this unit. Moreover, the showing of interest submitted by the former Local 6 does not demonstrate employee interest in the present Local 6. We will therefore set aside the election and dismiss the petition.

### ORDER

The petition is dismissed.

MEMBER ZIMMERMAN, dissenting.

It is undisputed that shortly after the election in this case the Hotel Employees and Restaurant Employees International Union changed, through trusteeship, the organizational structure and membership composition of the Petitioner. The Employer filed objections to the election, alleging that these changes in the Petitioner should preclude the Board from certifying the Petitioner as the bargaining representative of the Employer's employees.

<sup>3</sup> See also *M. A. Norden Co.*, 159 NLRB 1730 (1966) (certified International seeks amendment to add local affiliate). The same is true when two or more locals of the same International union merge into a single local. See *Newspapers, Inc.*, supra (division and merger); *Rinker Materials Corp.*, 162 NLRB 1688 (1967). The Board has recently held that continuity of representation in the case of merger requires that all bargaining unit employees have the opportunity to vote on the merger. *F. W. Woolworth Co.*, 268 NLRB 805 (1984); see generally *Amoco Production Co.*, 262 NLRB 1240 (1982). We do not address here the effect of trusteeship alone on the representative status of a labor organization.

<sup>4</sup> We therefore do not discuss the other factors that we would usually examine in determining continuity of representation. See, e.g., *Montgomery Ward*, 188 NLRB 551 (1971); *Canton Sign Co.*, 174 NLRB 906, 908 (1969); *Gulf Oil Co.*, 135 NLRB 184 (1962). Our dissenting colleague relies on such factors in arguing that a hearing is required. We do not disagree that these factors may raise substantial factual issues here. Nonetheless, because it is undisputed that there is no record of the employees' desires, we find any such factual issues immaterial to the ultimate conclusion that there is no continuity. Those issues therefore do not require a hearing.

Based on his investigation, the Regional Director overruled the Employer's objections, finding that the Petitioner continues to operate "substantially" as it did prior to imposition of the changes by the International Union and that it "would be premature to conclude that Petitioner has undergone the type of fundamental change that would bar its certification." In its exceptions the Employer takes issue with these factual and legal findings of the Regional Director.

I find that the Employer has raised substantial and material factual issues which warrant a hearing. See Section 102.69(d) of the Board's Rules and

Regulations. Further, the Board does not now have enough facts—indeed does not know what the precise facts are—concerning the Petitioner's change in structure and the effect of that change on its status as the representative of the Employer's employees to warrant either setting the election aside or issuing a certification of representative. Only after a hearing will the Board have sufficient information available to it to decide which of these actions should be taken.

Accordingly, contrary to my colleagues, I would remand this case to the Regional Director to conduct a hearing of the Employer's objections.